IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.60 OF 2005

GTC Industries Ltd. ...Petitioner.

Vs.

Vasant Shivram Teli & Ors. ...Respondents

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Mr.K.S.Bapat for the Petitioner.

Mr.R.H.Joshi for Respondent No.1.

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CORAM : DR.D.Y.CHANDRACHUD, J.

20th January 2005.

P.C.:

Rule. With the consent of Learned Counsel, Rule is made returnable. The First Respondent waives service. The petition is taken up for hearing and final disposal.

2. The First Respondent joined the services of the Petitioner in 1968 and at the time of his employment, mentioned his date of birth as 1st June 1942. On 13th April 1980, the Petitioner applied

for an Insurance Policy with the Life Insurance Corporation in which he declared his date of birth as 1st June 1942. The First Respondent had asked the Company at that stage to certify his date of birth. In the year 2000, the First Respondent sought an alteration of his date of birth to 28th November 1943. The Petitioner declined to alter the date of birth as recorded in the service records at that belated stage and on 12th April 2000, the First Respondent was informed that he would be superannuated from 31st May 2000.

3. On 27th April 2000, the First Respondent filed a complaint of unfair labour practices under Item 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971.The case of the First Respondent was that his date of birth was 28th November 1943 and not 1st June 1942 as recorded by the Company. In para 3(c) of the complaint, the First Respondent made a further submission to the effect that he was entitled to retire on the completion of the age of 60 years and not 58 years in view of the provisions of Model Standing Order 27. Para 3(c) of the complaint reads as follows:

> "(c) The Complainant further states that he

wrote another letter dated 15-4-2000 stating that as the Model standing Orders are applicable to the Respondents, his retirement age should be 60 years and not 58 years. The said letter is attached and marked as Exh."I" to this complaint. The Order No.27 of the Model standing Orders states as under :-

> "The age of retirement or superannuation of the workmen may be sixty years or such other age as may be agreed upon between the employer and the workmen by any agreement, settlement or award which may be binding on the employer and the workmen under any law for the time being in force".

The Xerox of order 27 of the Model standing Orders is attached and marked as Exh."J" to this complaint."

4. The Petitioner denied the allegations contained in the complaint and with reference to the averments contained in para 3(c) of the Complaint stated that the Company had its own certified standing orders under which the age of retirement

was 58 years. Moreover, it is stated that Kamgar Utkarsha Sabha was a recognised Union functioning in the Company which has signed a number of settlements under which the age of retirement has been duly settled at 58 years.

5. Evidence was adduced before the Industrial Court and the First Respondent in the course of his cross-examination admitted that he was a member of Kamgar Utkarsha Sabha. The First Respondent admitted that he was being paid salary and other benefits in accordance with settlements between the Union and the Company; the services were governed by the Standing Orders of the Company and that under the settlement dated 29th November 1979, the age of retirement would be 58 years. In the course of the examination of the witness for the Petitioner, the certified standing orders were produced and marked in evidence and the witness stated that the age of retirement was 58 years thereunder. In the course of the cross-examination, the witness stated that the Manager had discretion to grant an extension of two years under Certified Standing Order 26A. The witness denied the suggestion that an extension had been granted to some other employees in the Company.

6. On this state of the record, the Industrial Court allowed the complaint under Item 9, by its order dated 25th October 2004. The Industrial Court followed a decision of a Learned Single Judge of this Court in **Prabhakar Rajaram Gangan vs. Member, Industrial Court, Pune**, reported in 2000 II CLR 235, wherein it had been held that the discretion in regard to whether an extension in service should be granted must be exercised objectively; that the employee who had completed the age of 55 had a legitimate expectation to obtain an extension initially for a period of one year and for a maximum period of three years at the discretion of the Manager. The Learned Single Judge held that the case for extension has to be considered objectively in the context of the continued efficiency of the employee and on the basis of his past record of service. In that case, it was noted that nothing had been stated in the course of evidence by the employer as whether the services of the employee were without any utility to the employer. The complaint was allowed.

7. On the basis of the decision of the Learned Single Judge in 2000 II CLR. 235, the Industrial Court allowed the complaint in the present case and

directed the Petitioner to pay the salary together with attendant benefits to the First Respondent for two years until he completes the age of 60 years in accordance with the said order. At the hearing of the complaint, the case for alteration in the date of birth was not pressed. Hence, the complaint was allowed on the basis that the workman had a legitimate expectation that he would continue in service on an extension of two years after the attainment of the age of 58 years and the Manager had not furnished any reason for declining to grant an extension.

8. In the present case, it would be material to note at the outset that the entire complaint before the Industrial Court proceeded on the basis of the application of Model Standing Order 27 under which the age of retirement was 60 years. The Management in its written statement pointed out that the Company had its own certified standing orders under which the age of retirement is 58 and that under a settlement which was signed with the recognised Union, the same age of retirement has been provided for. This is accepted by the workman in his cross-examination. It was during the course of the evidence of the management's witness that a question was sought to be posed in regard to the

provisions of clause 26A of the Certified Standing Orders under which the Manager has a discretion to grant an extension of two years. The Industrial Court, as the judgment reads, proceeded entirely on the basis of the judgment of the Learned Single Judge of this Court in 2000 II CLR 235. The Petitioner has placed before the Court the decision rendered on 29th October 2004 by a Division Bench of this Court in **Janata Sahakari Bank Ltd. Vs. Prabhakar Rajaram Gangan** (Letters Patent Appeal No.267 of 2000 in Writ Petition 2262 of 1991) which was an appeal against the decision of the Learned Single Judge. in 2000 II CLR 235. The Division Bench reversed the judgment of the Learned Single Judge. That apart,it has been submitted that the Certified Standing Order expressly provides that the age of retirement or superannuation shall be 58 years and an extension should be granted in appropriate cases subject to physical fitness of the workman concerned. Counsel urged that the mere fact that the workman was found to be physically fit is not reason enough for the exercise of the discretion to extend the services of the workman by two years and the employer is entitled to assess whether to grant the extension from the perspective of the needs and requirement of the business. In my these submissions should be considered by the

Industrial Court. The Learned Trial Judge proceeded on the basis of the decision of the Learned Single Judge which, as already noted earlier, has now been overruled. In that view of the matter, both the Learned Counsel are agreed that the impugned order of the Industrial Court, may be quashed and the matter may be remanded back to the Industrial Court for a fresh decision on merits after hearing the parties.

9. Accordingly, the impugned order of the Industrial Court dated 11th October 2004 is quashed and set aside. Complaint (ULP) 400/2000 is restored to the file of the Industrial Court, Mumbai. Parties are directed to appear before the Trial Judge for directions on 14th February 2005 on which date the Learned Judge will set down an early date for the disposal of the matter. The petition is disposed of in the above terms. No order as to costs.

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